Supreme Court, U.S.
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No. 95-1659

In the Supreme Court of the United States

OCTOBER TERM, 1995

JERRY DALE LOWE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support petitioner's convictions for conspiring to damage a motor vehicle used in interstate commerce, and to disable its driver, in violation of 18 U.S.C. 371; aiding and abetting the damaging of such a vehicle, in violation of 18 U.S.C. 33 and 2; and disabling the driver of such a vehicle, in violation of 18 U.S.C. 33.

2. Whether the court of appeals erred in affirming the district court's exclusion of evidence under Federal Rule of Evidence 801(d)(1)(B), and in finding no plain error in the district court's refusal to admit evidence under Federal Rule of Evidence 804(b)(3).

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-26) is reported at 65 F.3d 1137.

JURISDICTION

The judgment of the court of appeals was entered on September 20, 1995. A petition for rehearing was denied on November 24, 1995. Pet. App. 27-28. The petition for a writ of certiorari was filed on February 22, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of West Virginia, petitioner was convicted on one count of conspiring to

damage a motor vehicle used in interstate commerce, and to disable its driver, in violation of 18 U.S.C. 371; one count of aiding and abetting the damaging of a motor vehicle used in interstate commerce, in violation of 18 U.S.C. 33 and 2; one count of disabling the driver of a motor vehicle used in interstate commerce, in violation of 18 U.S.C. 33; and one count of using or carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c). He was sentenced to 131 months' imprisonment, to be followed by three years' supervised release, and ordered to pay $6,318.50 in restitution to the family of one of his victims. Gov't C.A. Br. 4-5. The court of appeals affirmed. Pet. App. 1-26.

1. Petitioner, a member of the United Mine Workers of America (UMWA), participated in a strike at the Ruffner Coal Mine in West Virginia during 1993. Petitioner and other members of the local union established a picket line on Slab Fork Hollow Road, near the mine. On July 22, 1993, four trucks were attacked by the pickets as they drove along the road, and the driver of one of the trucks was shot and killed. Petitioner admitted attacking the vehicles in concert with other pickets, and the evidence showed that he fired the fatal shot.

a. Before the strike, the Ruffner Mine's owner, Apogee Coal Company, d/b/a Arch of West Virginia, had been cited by state authorities for environmental hazards at a sediment pond located on Slab Fork Hollow Road. In response to the citations, Arch hired the Deskins Contracting Company of West Virginia to clear sludge from the pond. Arch also hired Elite Security, a North Carolina company, to protect the Deskins employees from the striking miners. Pet. App. 1-2; Gov't C.A. Br. 7 & n.2.

On July 22, 1993, two Deskins employees, Marion Hensley and John York, drove two pickup trucks past the picket line to the sediment pond. Petitioner arrived at the picket line shortly thereafter. When he learned that the Deskins employees had driven past, petitioner went home, telephoned the president of the local union, and insisted that he join the picket line. Petitioner then drove back to the picket line himself. Pet. App. 2-3; Gov't C.A. Br. 7.

That afternoon, several Elite employees were assigned to drive to the pond in two vehicles and escort the Deskins employees past the pickets and back to the mine. As the security guards drove by the picket line on their way to the sediment pond, one of their vehicles was hit with a steel ball fired from a slingshot. Shortly thereafter, the pickets heard a loud noise, which may have been a backfire, but which some of the pickets apparently believed was a gunshot fired from one of the security vehicles. The pickets agreed to ambush the security vehicles on their return trip from the pond. Petitioner prepared for the ambush by hiding in a nearby wooded area. Pet. App. 3-4; Gov't C.A. Br. 7-8.

As the four vehicles were returning along the road from the pond, they were attacked. One of the security vehicles and the Deskins truck being driven by Hensley had their windshields smashed by rocks. The other security vehicle was hit with a bullet, although the driver was not injured. York, the driver of the other Deskins truck, was shot in the head and killed after the bullet passed through the rear window of his vehicle. That night, petitioner admitted to police officers that he had participated in the rock attack, but denied shooting York. Pet. App. 4-5.

The evidence at trial showed that petitioner had shot York. A week or two before the ambush, petitioner had obtained a Colt pistol from his nephew, William Lowe; petitioner was seen with the pistol on the picket line the day before the ambush. It was uncontroverted at trial that the Colt pistol had fired the shot that killed York. Just before the ambush, petitioner emerged from the woods with a BB-gun and brought it to his truck, saying that it was "worthless" and that he would be better off throwing a rock. An expert witness testified that the bullet that killed York came from the wooded area where petitioner had hidden. Pet. App. 3-6, 9-10.

b. At trial, the district court excluded two pieces of evidence offered by petitioner. First, the court excluded petitioner's statement to his nephew, William Lowe, that he had sold the Colt pistol several days before the shooting. Petitioner acknowledged that the statement was hearsay, but offered it during his own testimony under Federal Rule of Evidence 804(b)(3) as a statement against his penal interest. The district court excluded the statement after concluding that it was in petitioner's penal interest, rather than against it. Pet. App. 10.

The court also excluded a statement by Lawton Jack Starkey, one of the pickets who had participated in the ambush, that Starkey had purchased the Colt pistol from petitioner.[1] Petitioner offered the state-

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[1] Starkey allegedly made that statement to his attorney, John Kessler, who turned over the Colt pistol to the government before the trial. Pet. App. 5, 13. At trial, Starkey invoked his right against compelled self-incrimination. *Id.* at 14. Petitioner subpoenaed Kessler (C.A. App. 73) to testify about Starkey's statements to him, but the district court granted Kessler's motion to quash and the government's

ment under Rule 804(b)(3), arguing that it was against Starkey's penal interest to admit that he possessed the gun.[2] The district court excluded Starkey's statement, finding that, even if it were against his penal interest, it was offered to exculpate petitioner and did not satisfy Rule 804(b)(3)'s requirement that "corroborating circumstances clearly indicate the trustworthiness of [such an exculpatory] statement." See Pet. App. 13-16.

Despite those evidentiary rulings, petitioner was able to present evidence regarding the Colt pistol. Petitioner testified that he had obtained the pistol from his nephew a week or two before the shooting; that he had offered to sell it to various union members prior to the shooting; that he had sold the gun to Starkey more than a week before the shooting; that he had never seen it again; and that he had had possession of the gun altogether for "at the most three hours." C.A. App. 784-785; see Gov't C.A. Br. 37. Petitioner's nephew testified that he had transferred

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corresponding motion in limine. *Id.* at 758-762; see Pet. App. 13; Gov't C.A. Br. 40-41. The court based its decision on hearsay principles, and did not discuss any issue of attorney-client privilege. See C.A. App. 758-762.

[2] Rule 804(b)(3) provides that, where the declarant is unavailable as a witness, an out-of-court statement is not excluded by the hearsay rule if

> at the time of its making * * * [it] so far tended to subject the declarant to civil or criminal liability * * * that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

the gun to petitioner, and that he had tried to retrieve the gun from petitioner before the shooting, but had been unable to do so. C.A. App. 811-812; Pet. App. 12-13; see Gov't C.A. Br. 37.

c. The jury was instructed that, to convict petitioner under 18 U.S.C. 33, "[i]t is not necessary * * * that the trucks being driven by employees of Elite Security and Deskins Contracting actually be traveling across state lines or from one state to another." C.A. App. 1031. Instead, the district court instructed the jury, "the interstate commerce requirement [of Section 33] may be satisfied if the government has proved beyond a reasonable doubt that the trucks * * * were used or employed by Arch of West Virginia in connection with and in furtherance of its business of distributing coal mined in West Virginia to consumers in another state, or used or employed by Elite Security in connection with and in the course of conducting its business of providing security services outside the State of North Carolina." *Id.* at 1031-1032.

2. a. The court of appeals affirmed petitioner's convictions. Pet. App. 1-26. Petitioner argued that the trucks driven by the Deskins and Elite employees were not "motor vehicles" because they were not "used * * * in the transportation of passengers, passengers and property, or property and cargo." 18 U.S.C. 31. The court rejected that claim, concluding that "each of the vehicles was used 'in the transportation of passengers'" because "[t]he Elite vehicles were used to escort the Deskins employees * * * and the vehicles used by Deskins were used to transport workers for Deskins." Pet. App. 9 (quoting 18 U.S.C. 31). Therefore, the court concluded, "the

vehicles in the convoy were 'motor vehicles' within the meaning of the statute." *Ibid.*

Petitioner also claimed that the trucks were not "used, operated, or employed in interstate or foreign commerce," as required by Section 33. The court of appeals rejected that claim as well, explaining that Arch sold coal in several States, that Deskins was a West Virginia company doing business in both West Virginia and Kentucky, and that Elite was a North Carolina company working at the mine in West Virginia. See Pet. App. 1-2 & n.3. The court explained that the ambushed vehicles "were used to further the distribution of Arch's coal to interstate markets; indeed, without the assistance of Elite and Deskins, it is likely the Arch mine would have had to cease its operations permanently. Furthermore, the vehicles were used in furtherance of Elite's business of furnishing security services in the interstate market." *Id.* at 9. Thus, the court of appeals had "no difficulty concluding the vehicles in the convoy were used in interstate commerce at the time of the attack." *Ibid.*

The court also found sufficient evidence that petitioner had killed York. It summarized the evidence as follows:

> First, * * * it was uncontroverted at trial that the Colt Trooper Mark III pistol fired the fatal shot that killed York. Second, [petitioner], within days prior to the shooting, possessed the Colt Trooper Mark III pistol at the picket site. Third, shortly before the attack, [petitioner] was seen in possession of a BB-gun, but complained it was worthless for an attack on the vehicles; [petitioner] then took the BB-gun back to his truck—

> the same truck in which he had been seen carrying the Colt Trooper Mark III pistol. Fourth, there is evidence in the record from which the jury could find that [petitioner] fired the fatal shot. In this regard, [an expert witness's] testimony established a cone-shaped area from which the fatal shot originated and the circumstantial evidence, namely, the evidence that the shot came from the creek side of the road in the area [petitioner] positioned himself for the ambush and the discovery of the Budweiser Light beer can within the conical area described by [the expert witness], placed [petitioner] in the area described by [the expert].

Pet. App. 9-10.

b. The court of appeals rejected petitioner's challenge to the district court's evidentiary rulings. Petitioner abandoned the contention that his statement to William Lowe was admissible as against his penal interest under Rule 804(b)(3). Instead he argued that the statement should have been admitted as a prior consistent statement used to rebut a charge of recent fabrication under Rule 801(d)(1)(B). Reviewing for plain error because petitioner had not presented the theory at trial, the court of appeals rejected that claim. The court explained that "[c]orroborative testimony consisting of prior, consistent statements is ordinarily inadmissible unless the testimony sought to be bolstered has first been impeached." Pet. App. 12 (quoting *United States* v. *Weil*, 561 F.2d 1109, 1111 (4th Cir. 1977)). Because no prior attempt had been made to impeach petitioner's testimony, the court concluded that his prior consistent statement was not admissible under Rule 801(d)(1)(B). The court noted, moreover, that the

district court had admitted substantially equivalent evidence during the direct examination of petitioner's nephew. Pet. App. 11-13.

The court also held that the district court had properly excluded Starkey's hearsay statement that he had purchased the Colt pistol from petitioner. Although the court acknowledged that "whether Starkey's statement * * * was adverse to his penal interests is a * * * close[] question," Pet. App. 14, it held that the district court had not abused its discretion in concluding that "corroborating circumstances [did not] clearly indicate the trustworthiness of the statement," as required by Rule 804(b)(3) when a statement against penal interest is "offered to exculpate the accused." See Pet. App. 14-16; note 2, *supra*.

c. Judge Motz dissented, concluding that petitioner's actions did not violate Section 33. In her view, the Deskins trucks were not "motor vehicles" as defined in Section 31 because they were not used to transport passengers, but only their drivers. Pet. App. 21-23. Judge Motz also concluded that the trucks were not used "in commerce," as required by Section 33. Pet. App. 23-26. She explained that in her view Section 33 requires "the vehicles *themselves* [to] have some connection to interstate commerce," and she found it "wholly irrelevant" that "the owners of the vehicles, Arch and Elite, were engaged generally in interstate activities." *Id.* at 23.

ARGUMENT

1. Petitioner again challenges (Pet. 7-26) his convictions under 18 U.S.C. 33. That statute makes it a federal crime to damage "any motor vehicle which is used, operated, or employed in interstate or foreign commerce."[3] Under 18 U.S.C. 31, a "motor vehicle" is defined as "every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, passengers and property, or property and cargo." The term "used for commercial purposes" is further defined by Section 31 to mean "the carriage of persons or property for any fare, fee, rate, charge or other consideration, or

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[3] Section 33 provides, in relevant part:

> Whoever willfully, with intent to endanger the safety of any person on board or anyone who he believes will board the same, or with a reckless disregard for the safety of human life, damages, disables, destroys, tampers with, or places or causes to be placed any explosive or other destructive substance in, upon, or in proximity to, any motor vehicle which is used, operated, or employed in interstate or foreign commerce, or its cargo or material used or intended to be used in connection with its operation; or
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> Whoever, with like intent, willfully disables or incapacitates any driver or person employed in connection with the operation or maintenance of the motor vehicle, or in any way lessens the ability of such person to perform his duties as such; * * *
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> shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

18 U.S.C. 33 (1988).

directly or indirectly in connection with any business, or other undertaking intended for profit."

a. Petitioner contends (Pet. 9-12) that the trucks in this case were not "motor vehicles" under Section 31 because they were not "used * * * in the transportation of passengers."[4] Petitioner argues that the driver of a motor vehicle cannot be a "passenger" within the meaning of Section 31. The court of appeals correctly rejected that contention, because the Deskins trucks were used to transport the Deskins employees to and from the sediment pond. Nothing in the language of Section 31 suggests an intent to exclude vehicles containing only a driver where (as here) the driver is using the vehicle to transport himself "directly or indirectly in connection with any business." York not only drove the truck, but was its passenger because the purpose of the trip was to transport him from the mine site to the Deskins shop. Petitioner does not contend that the court of appeals' holding conflicts with any other published decision on this issue. Further review is unwarranted.

b. Petitioner also contends (Pet. 12-18) that the vehicles in this case were not "used, operated, or employed in interstate or foreign commerce," as required by Section 33.[5] As the court of appeals concluded (Pet. App. 9), however, Arch, Deskins, and Elite were all companies that engaged "in" interstate commerce because they bought and sold goods and services in more than one State. See *United States* v. *Robertson*, 115 S. Ct. 1732, 1733 (1995) (per curiam) ("a

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[4] Petitioner does not dispute any other element of the definition. See Pet. 9-12; Pet. App. 9.

[5] Petitioner does not claim that Congress lacks the power to proscribe his conduct under the Commerce Clause.

corporation is generally engaged in commerce when it is itself directly engaged in the production, distribution, or acquisition of goods and services in interstate commerce") (internal quotation marks omitted). The vehicles in this case were all used in furtherance of the companies' respective interstate commercial activities. Thus, as the court of appeals concluded, they were used "in commerce" within the meaning of Section 33.

Petitioner contends (Pet. 16) that the decision below conflicts with decisions interpreting the federal arson statute, 18 U.S.C. 844(i), which makes it a federal crime to damage or destroy by means of fire or an explosive "any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce." He relies on *United States* v. *Monholland*, 607 F.2d 1311 (10th Cir. 1979), and *United States* v. *Voss*, 787 F.2d 393 (8th Cir.), cert. denied, 479 U.S. 888 (1986), both of which reversed convictions under Section 844(i). Those cases are distinguishable, however, because they involved no direct connection between the prohibited arson and interstate commerce.

In *Monholland*, the court held that a pick-up truck used by a state judge for commuting to and from the local courthouse was not a "vehicle * * * used * * * in any activity affecting interstate or foreign commerce" covered by Section 844(i). The court explained that "[t]he vehicle in question was not even used on official business," and that "[t]he important problem here is that movement to and from work is an activity which ordinarily has an existence independent from the work. It does not blend into and become a part of the career." 607 F.2d at 1316. In the instant

case, by contrast, the trucks were "used to further the distribution of Arch's coal to interstate markets" and "in furtherance of Elite's business of furnishing security services in the interstate market." Pet. App. 9.[6]

In *Voss*, the jury was instructed that a building destroyed by arson was "used * * * in an[] activity affecting * * * commerce" if its owner had "purchased insurance from an insurance carrier doing business in [another] state." 787 F.2d at 396 n.1. The court of appeals held that the instruction was inadequate "because it requires a nexus only between interstate commerce and the owner of the building, not the building itself." *Id.* at 396. The instruction was defective, the court explained, because "it does not ask whether the insurance was purchased for the * * * property [that was to be burned]," rather than for some other piece of property owned by the real estate company. *Ibid.* In the present case, by contrast, the vehicles in question were not simply owned by a company engaged in interstate commerce; they were used directly in furtherance of the company's interstate business, and were so employed at the time of petitioner's attack.

Petitioner cites no decision suggesting that a vehicle is used "in interstate commerce" only if it actually travels across state lines. To the contrary, the decision below is consistent with the only other reported court of appeals decision directly addressing this issue. In *United States* v. *Heightland*, 865 F.2d

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[6] In any event, *Monholland* is of questionable validity after this Court's decision in *Russell* v. *United States*, 471 U.S. 858 (1985). See *United States* v. *Shively*, 927 F.2d 804, 808 (5th Cir.), cert. denied, 501 U.S. 1209 (1991).

94 (6th Cir.), cert. denied, 493 U.S. 826 (1989), a Kentucky coal mine hired trucks to transport coal from the mine to a tipple facility, also located in Kentucky, where it was loaded onto rail cars and transported to Virginia for sale. The defendants attacked the trucks as they were returning from the tipple facility to the mine, and the court of appeals affirmed their convictions for violating Section 33. The court explained that, while the trucks were not "moving from one state to another" when they were attacked, they were within the reach of the statute because they were being used to further the interstate business of the coal mine "as the first phase of the truck-train interstate journey from" Kentucky to Virginia. *Id.* at 96; see *United States* v. *Bishop*, 66 F.3d 569, 589 (3d Cir.) (discussing *Heightland*), cert. denied, 116 S. Ct. 681 (1995) & 116 S. Ct. 750 (1996). This Court's review is therefore not warranted.

2. Petitioner also renews his claim (Pet. 23-26) that the evidence was insufficient to show that he shot York. As noted above (see pages 7-8, *supra*), there was ample evidence supporting the jury's verdict. In any event, petitioner's fact-bound sufficiency of the evidence claim does not warrant review by this Court. See *Hamling* v. *United States*, 418 U.S. 87, 124 (1974) ("The primary responsibility for reviewing the sufficiency of the evidence to support a criminal conviction rests with the Court of Appeals").

3. Petitioner challenges (Pet. 26-29) the exclusion of his statement to William Lowe that he had sold the Colt pistol several days before the shooting. See page 4, *supra*. He contends that the statement was admissible under Federal Rule of Evidence 801(d)(1)(B), which provides that a prior out-of-court statement consistent with a witness's trial testimony is not

hearsay if the declarant testifies and is subject to cross-examination concerning the statement at trial, and the prior statement is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive.[7] See *Tome* v. *United States*, 115 S. Ct. 696, 701 (1995) ("admissibility under the Rule[] is confined to those statements offered to rebut a charge of 'recent fabrication or improper influence or motive'"). As the court of appeals in this case recognized, "proof of prior consistent statements is not admissible unless and until there has been some impeachment of the witness," *e.g.*, a charge of recent fabrication. Pet. App. 12 (citation omitted); see, *e.g.*, *United States* v. *White*, 11 F.3d 1446, 1450 (8th Cir. 1993) ("a corroborating statement may not be admitted under 801(d)(1)(B) until the declarant's testimony at trial has been challenged"); *United States* v. *Asher*, 854 F.2d 1483, 1499 (3d Cir. 1988) ("absent any charge of recent fabrication or improper influence or motive, a prior consistent statement is inadmissible"), cert. denied, 488 U.S. 1029 (1989).

Petitioner contends (Pet. 28) that the court of appeals in this case interpreted the Rule to require an "express impeachment" in the form of cross-examination, and that its analysis conflicts with

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[7] Rule 801(d)(1)(B) provides that a statement is not hearsay if

> [t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is * * * (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive.

decisions holding that a party's "entire theory of the case" may create the requisite impeachment, even before the witness is subjected to cross-examination. Petitioner relies on *United States* v. *Gonzalez*, 700 F.2d 196, 202 (5th Cir. 1983), which held that a defendant's prior consistent statements were admissible during his direct examination "[b]ecause the implication of the government's evidence [in its case-in-chief] necessarily was that [he] had fabricated his defense of lack of criminal intent."

The decision below does not present a square conflict with *Gonzalez*. The court in *Gonzalez* determined that the government's case-in-chief supplied the requisite impeachment in the circumstances of that case, but it did not hold that the government's case-in-chief *always* supplies the impeachment required by Rule 801(d)(1)(B). Such a holding would effectively eliminate the impeachment requirement whenever a defendant takes the stand to proclaim his innocence. Conversely, the court of appeals in the instant case did not hold that the government's case-in-chief may *never* supply the required impeachment; nor has the Fourth Circuit or any other court of appeals squarely so held. See Jean F. Rydstrom, Annotation, *Effect of Rule 801(d)(1)(B) of the Federal Rules of Evidence Upon the Admissibility of a Witness' Prior Consistent Statement*, 47 A.L.R. Fed. 639, 651 (1980). But cf. *United States* v. *Azure*, 801 F.2d 336, 342 (8th Cir. 1986) (prior consistent statement "was only admissible as such after [the witness] had been impeached on cross-examination").

In most cases, the question "whether there has been a charge of recent fabrication" under Rule 801(d)(1)(B) "involves much discretion on the part of the district judge." *United States* v. *Montague*, 958

F.2d 1094, 1098 (D.C. Cir. 1992). That is especially true where, as here, the alleged charge of recent fabrication depends on the government's entire "theory of the case." Thus, petitioner's claim reduces to a disagreement with the court of appeals' conclusion that the government's case-in-chief did not, by itself, establish the charge of recent fabrication required by the Rule. That fact-bound claim does not merit this Court's review.[8]

In any event, this case is not an appropriate vehicle for resolving any tension in the circuits. As the court of appeals noted (Pet. App. 11), petitioner did not invoke Rule 801(d)(1)(B) at trial. That omission is particularly significant in light of the discretionary nature of admissibility determinations under that Rule. Moreover, petitioner did not squarely present his "theory of the case" argument even to the court of appeals. See Pet. C.A. Br. 32-33; Pet. C.A. Reply Br. 16-18. Finally, because petitioner was able to present similar testimony through other means, see Pet. App. 12-13; pages 5-6, *supra*, he would not be entitled to relief even if the district court had erred.[9]

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[8] Petitioner also claims (Pet. 28) that the decision below conflicts with *United States* v. *Casoni*, 950 F.2d 893 (3d Cir. 1991). In *Casoni*, however, the government witness's prior consistent statements were admitted only after he was cross-examined on the theory that "he had fabricated his testimony to implicate [the defendants] in order to gain immunity for himself." *Id.* at 898.

[9] Petitioner also renews his claim (Pet. 29-32) that the district court erred in excluding Starkey's statement that he had bought petitioner's pistol before the shooting. Both courts below concluded that "corroborating circumstances [did not] clearly indicate the trustworthiness of [Starkey's] statement," as required by Federal Rule of Evidence 804(b)(3). There is no basis for further review of that fact-bound conclusion.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JULY 1996